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September 12, 2005

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

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Re: Applications for Consent to Transfer Control of Filed by Verizon
Communications, Inc. and MCI, Inc., WC Docket No. 05-75 - REDACTED

Dear Ms. Dortch:

In their latest filing in this proceeding, Broadwing/SAVVIS continue to argue that the transaction will harm competition in the Internet backbone business.^{1/} Having failed in their previous attempts to overcome Verizon/MCI's showing that the Internet backbone business will remain competitive after this transaction, they now resort to unsupported conjecture and claims that are in no way merger-specific. These attempts are no more successful than their prior claims and offer no basis to impose conditions on the transaction.

First, Broadwing/SAVVIS offer no support for their speculation (at 2-3, 5-7) that the transaction might someday result in Verizon/MCI obtaining a high enough share of the Internet backbone business to permit it to engage in anti-competitive actions. As we have shown, the transaction will not materially alter the status quo in terms of the backbone business, which will remain highly competitive. The combined company will carry less than 10% of North American Internet traffic, it will rank fourth among seven comparable or larger backbone operators, and operators other than those seven will carry approximately 35 percent of Internet traffic. See Reply at 70-80; Kende Reply Decl. ¶ 8. While Broadwing/SAVVIS assert (at 4) that SBC/AT&T have not provided adequate information about their current traffic levels, they do not make the same complaint about Verizon/MCI, nor do they contest that these numbers demonstrate that the combined company's traffic share will not give it market power over the Internet backbone business.

Although Broadwing/SAVVIS point in passing (at 5) to revenue numbers that they suggest indicate that Verizon and MCI are each one of the four biggest backbones, we have explained why those revenue numbers do not accurately reflect the relevant market shares, and Broadwing/SAVVIS make no effort to respond to that explanation. In particular, the revenue data for Verizon (and other ILECs) appear to include revenue from dedicated business lines that connect Internet service provider customers to Verizon's points of presence; because non-ILEC

^{1/} See Letter from Christopher J. Wright, Counsel for Broadwing Communications and SAVVIS Communications to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75 & Declaration of Simon Wilkie ("Wilkie Decl.") (Aug. 12, 2005).

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backbone operators do not typically offer these dedicated lines, the revenue figures do not compare like services. *See* Kende Reply Decl. ¶¶ 12-13. In any case, given that Verizon's backbone is primarily regional in scope and carries only about 2 percent of North American Internet traffic, *see id.* ¶ 8; Lack/Pilgrim Decl. ¶ 17, it defies common sense to suggest that Verizon has one of the four largest backbones today. Indeed, SAVVIS itself has refused to peer with Verizon, which it presumably would not do if Verizon actually were one of the four largest backbones. Pilgrim Reply Decl. ¶ 6.

Broadwing/SAVVIS's primary argument (at 5-7) appears to be that the amount of traffic on Verizon/MCI's backbone sometime *in the future* will increase as more traffic moves to IP. But they offer no basis to conclude that Verizon/MCI's relative *share* of Internet traffic will increase. With respect to broadband access service, Broadwing/SAVVIS's conjecture appears to be that as residential broadband and wireless broadband traffic increases, more IP traffic will originate from (and terminate to) the combined company's retail broadband customers and that this traffic will ride over the Verizon/MCI backbone. But other broadband access providers will also see increases in such traffic, and Broadwing/SAVVIS offer no explanation for why that increase would somehow be disproportionately greater for Verizon/MCI. Indeed, cable modem, not DSL, is the clear market leader for broadband, and Time Warner, Comcast, and other cable companies obviously also will benefit from increases in broadband Internet traffic. *See* Letter from Dee May, Verizon and Curtis Groves, MCI to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75, at 7-8 (Aug. 8, 2005) ("*EarthLink Response*"); Reply at 83-84; Hassett et al. Decl. ¶ 58; Hassett et al. Reply Decl. ¶¶ 38-40. And because cable companies and other broadband access providers have numerous backbone operators from which to choose and can self-provision, *see, e.g.*, Reply at 68, there is no reason that the predicted increase in broadband traffic would provide a disproportionate benefit to Verizon/MCI or translate into an increased share of backbone traffic for Verizon/MCI.

Moreover, the growth in other forms of broadband access – most notably, broadband wireless, which Broadwing/SAVVIS repeatedly emphasize as providing a significant source of competition (at 6-7) – will likely *reduce* the proportion of broadband access traffic carried over DSL because customers can turn to these additional alternative technologies. Although Verizon Wireless will benefit to some degree from the growth of wireless broadband access, so will the various other significant wireless players. For example, Sprint is in the midst of rolling out an EV-DO network that provides nearly DSL-speed connectivity, and Cingular is following suit with a GSM equivalent.^{2/} Similarly, T-Mobile has also upgraded its data capabilities.^{3/} The end

^{2/} *See, e.g.*, S. Ellison, IDC, *US Wireless Consumer 2004-2008 Forecast Update: November 2004*, at 3 (Nov. 2004) ("Other carriers like Sprint PCS, Nextel, and Cingular are expected to follow suit with their 3G deployment in late 2005, throughout 2006, and beyond."); UBS Investment Research, *Sprint Corporation: Improved outlook based on strong selling wireline performance*, at 7 (July 27, 2005) ("[W]e believe that Sprint PCS will likely see meaningful contributions from highspeed wireless data, which has commanded higher price points."); Friedman Billings Ramsey, *Capital Expenditures Forecast 2005-2006: Wireless Strength Partially Offset by Consolidation Synergies*, at 3 (Apr. 13, 2005) ("Cingular plans to deploy

result of these developments will be an increasingly fragmented broadband access market. As a result, while the overall amount of broadband IP traffic may well increase, there is no reason to believe that the relative share carried over Verizon/MCI's backbone will increase.

Broadwing/SAVVIS similarly fail to show that the increasing migration of voice service to VoIP will increase Verizon/MCI's market power in the backbone business. As an initial matter, it is worth noting Broadwing/SAVVIS's concession (at 7) that VoIP is a substitute for wireline voice service for mass market customers (a point that other parties have contested). Again, however, there is no reason to expect that an increase in overall traffic will lead to an increase in Verizon/MCI's relative share of Internet backbone traffic. Rather, numerous other competitors are poised to capture significant shares of VoIP traffic. Cable is staking its strategy for providing voice service on VoIP and is gaining an increasingly large share of the voice market. For example, Time Warner added over 240,000 net new customers in the second quarter of 2005, about sixty percent more than the number it added in the first quarter.^{4/} Cablevision added more than 100,000 voice telephony customers in the second quarter of 2005 and now has approximately 478,000 customers.^{5/} As noted above, can and do use a variety of other backbone operators and self-provision. Further, numerous other independent VoIP providers have experienced rapid growth. Vonage, for example, now provides service to more than 1,000,000 customers and continues to add 15,000 customers per week.^{6/} Skype, a service that allows customers to make *free* computer-to-computer calls "has now enabled more than 7 billion high-quality minutes of talk time for Skype users worldwide."^{7/} Customers of these independent providers can use any broadband access provider they choose and, as explained, above there is no reason to expect that a disproportionate number will select Verizon DSL over the variety of other available alternatives.

UMTS in 15 to 20 markets by 4Q05 and in the remainder of its markets by the close of 2006."); J. Halpern, *et al.*, Bernstein Research, *US Wireless: Accelerated growth Driven by Youth and Business Markets; Outlook Positive for Large Carriers* (May 12, 2005); Bill Draper, *Sprint Rolls Out Wireless Internet Plan*, Associated Press, July 8, 2005.

^{3/} See, e.g., T-Mobile USA Technology Overview (visited Sept. 9, 2005) <http://www.tmobile.com/company/about/technology.asp>.

^{4/} Time Warner Inc., Presentation of Wayne Pace, CFO, *Time Warner Inc.: Second Quarter 2005 Results* (Aug. 3, 2005).

^{5/} Cablevision Press Release, *Cablevision Systems Corp. Reports Second Quarter 2005 Results* (Aug. 9, 2005).

^{6/} Vonage Press Release, *Industry Pioneer Is First North American Broadband Telephony Provider To Cross the Million-Line Mark* (Sept. 6, 2005); Vonage, *Fast Facts* (visited Aug. 29, 2005) http://www.vonage.com/corporate/aboutus_fastfacts.php; Vonage Press Release, *Vonage Contracts with Verizon for Nomadic VoIP E9-1-1 Service* (May 4, 2005).

^{7/} *SkypeIn and Skype Voicemail Beta*, Business Wire (Apr. 15, 2005).

Broadwing/SAVVIS's suggestion (at 6 n.18 & 7) that Verizon's position in the wireline voice market gives it some kind of advantage in the VoIP market is belied by the fact that the growth of intermodal competition, including VoIP, has *reduced* Verizon's share of voice traffic whether measured in terms of minutes or lines. *See, e.g.*, Reply at 49-50. And, while Verizon has launched a VoIP product, that product has not stopped the flow of customers to cable and other VoIP providers, as Broadwing/SAVVIS's theory would suggest it should. Thus, as with the growth of competition for broadband access services, the continued development of VoIP will result in a splintering of the market for voice services, making it that much more difficult for Verizon/MCI or any other carrier to obtain market power over either retail voice or the backbone business.

Finally, Broadwing/SAVVIS's contention (at 6-7) that Verizon/MCI should be required to provide detailed projections of future levels of backbone traffic overlooks the fact that MCI provided such projections for 2005 and 2006 in response to staff data requests. Response of MCI to the Commission's May 5, 2005 Initial Information and Document Request, Spec. 8.c (May 26, 2005). Similarly, pursuant to a request from staff, Verizon submitted its forecasts of the amount of traffic it expects to carry on its backbone facilities for its Internet service provider customers. Letter from Dee May, Verizon to Marlene Dortch, Secretary, FCC, WC Docket No. 05-75 (Aug. 5, 2005). In any event, such projections are inherently speculative. Indeed, Broadwing/SAVVIS specifically complain that, because the backbone business is so dynamic, 2003 traffic data provide little information about 2004 traffic levels. This complaint demonstrates the inherent difficulty of such projections even for one year, much less the significantly longer time horizons contemplated by Broadwing/SAVVIS. Moreover, because the key issue is not the amount of traffic that will be carried by Verizon/MCI, but its relative share of such traffic, a meaningful projection would have to include expected traffic levels for *all* backbone operators, and Verizon/MCI have no meaningful basis on which to make such a prediction.

Second, Broadwing/SAVVIS reiterate their claim (at 3, 8-9 & Wilkie Decl. ¶¶ 13-18) that the transaction will enable the combined company to disconnect other backbones or service providers or degrade competitors' traffic. In doing so, they implicitly concede that such a strategy would hurt Verizon/MCI's own customers, but they speculate that Verizon/MCI could nevertheless engage in this approach because their customers are less likely to leave than are the customers of other backbone operators. The two premises of Broadwing/SAVVIS's claim appear to be that a greater number of Verizon/MCI's backbone customers are "eyeball" customers (i.e., residential customers) and that such customers are less likely to leave in the face of degradation of services. But they offer no support for either premise.

With respect to the claim that that Verizon/MCI's backbone disproportionately serves "eyeball" customers, as we have shown – and Broadwing/SAVVIS entirely ignore – the combined company's traffic will generally be balanced between incoming and outgoing traffic. Reply at 79. Yet Broadwing/SAVVIS have previously argued that an "eyeball" heavy network would be unbalanced and have much higher incoming traffic than outgoing traffic. Broadwing/SAVVIS Opp. at 39. Thus, by Broadwing/SAVVIS's own logic, the fact that

Verizon/MCI's traffic will be balanced means that its network will not be "eyeball heavy." Further, Broadwing/SAVVIS's theory also fails to take into account the fact that cable companies and other providers are likely to control more "eyeballs" than Verizon – particularly given that significantly more end users rely on cable modem service than on DSL. Hassett et al. Reply Decl. ¶ 38. As a result, the backbone operators those companies use will have a substantial proportion of eyeball customers. In any case, there can be no question that Verizon/MCI have numerous content and application provider customers of the type that Broadwing/SAVVIS concede have both the incentive and ability to leave if Verizon/MCI's service quality declined. That fact alone means that a strategy of degradation or disconnection would not make sense.

As to residential broadband customers, Broadwing/SAVVIS conflate Verizon/MCI's own residential retail broadband customers with residential customers of Internet service providers that are wholesale customers of Verizon/MCI's backbone. But as to the latter, Internet service providers are as capable of changing backbone providers as are other content and application providers. Indeed, as Wilkie himself notes (at ¶ 11), Internet service providers typically are multi-homed, which would permit them to re-route their traffic away from Verizon/MCI with minimal cost or delay if degradation or disconnections caused their users to be unable to reach others or to receive lower quality service. Broadwing/SAVVIS's insinuation (at 8) that Verizon/MCI have been hiding the fact that they have wholesale cable customers is simply wrong. Verizon/MCI have explicitly discussed this fact and have explained that such customers have many other competitive choices, including self-provisioning. *See, e.g.*, Reply at 67-68; White Paper at 64-70. Moreover, contrary to Broadwing/SAVVIS's speculation (at 8), MCI's contracts with cable companies are non-exclusive; Time Warner, for example, also uses Sprint for wholesale services. Hassett et al. Reply Decl. ¶ 33. And, as we have explained, MCI is currently providing wholesale service to cable companies in only a limited number of local areas. *See* White Paper at 65-66. Thus, Verizon/MCI in no way "controls" cable modem customers, and those cable companies to which MCI does provide wholesale service are free to use other backbone operators.

Finally, with respect to residential broadband customers of Verizon (whose traffic would travel in the first instance over the Verizon/MCI backbone), we have shown that such customers have competitive choices – particularly cable modem – and accordingly could and would switch broadband providers if their access to unaffiliated content and application providers (or other users with whom they wished to communicate) were curtailed through disconnection or degradation. *See, e.g.*, EarthLink Response at 7-9; Hassett et al. Decl. ¶ 58; Hassett et al. Reply Decl. ¶¶ 38-40; Hassett Decl. ¶ 58. Broadwing/SAVVIS do not contest the existence of this competition, and indeed, as noted above, concede that such competition will increase with the rollout of wireless broadband services. Instead, they speculate (at 3, 8-9 & Wilkie Decl. ¶ 15) that such customers are somehow tied to their existing broadband provider and unlikely to leave even in the face of degraded service. But they offer no evidence in support of this claim. To the contrary, Broadwing/SAVVIS themselves assert (at 11 & Wilkie Decl. ¶ 8) that end users value the ability to obtain content *more* than content providers value the ability to reach end users, an argument that highlights the fact that residential end users would have strong reason to switch providers if they were unable to reach desired content or applications or if such traffic was

degraded. Broadwing/SAVVIS's supposition is further belied by the fact that broadband access providers engage in a variety of advertising and marketing offers and price cuts designed to entice residential customers to switch from their existing broadband providers to the advertiser's service and by the entry of new players such as broadband wireless, which would not make much sense if they thought the installed base of broadband customers would not consider changing providers.

Broadwing/SAVVIS speculate (at 3, 8) that residential customers may be more likely to be tied to long-term contracts. But in fact more than 60% of Verizon's broadband customers today either have no term commitment or already have exceeded that term, and the remainder generally are subject to terms of one year or less. Broadwing/SAVVIS also posit (at 3, 8) that residential customers may not leave due to a reluctance to lose their e-mail addresses. But millions of individuals use web-based e-mail accounts from services such as HotMail and Yahoo!, which they can continue to use even if they switch broadband access providers. And, in any case, even if some residential customers generally might be more reluctant to switch providers if doing so meant changing their e-mail addresses, that would be significantly less true if their provider was engaged in degradation or other tactics that reduced the quality of service and the value of the e-mail address. Indeed, as we have explained, because the combined company will carry only about 10% of all North American Internet traffic, any action it took to cut off or degrade traffic from other backbone operators, would negatively affect the large majority of traffic that its own customers receive or want to receive and provide strong incentives for them to switch providers. *See EarthLink Response at 4-7.*

At bottom, Broadwing/SAVVIS cannot escape the fact that the large majority of all customers whose traffic rides over Verizon/MCI's backbone (content and application providers, Internet service providers, and residential customers of its retail broadband services) would be able and willing to leave if Verizon/MCI engaged in a strategy of degradation or disconnection that harmed service quality. As a result, such a strategy would not make sense from a business standpoint.

Third, Broadwing/SAVVIS's claims concerning transit and the use of traffic ratios in peering decisions (at 9-11) are not merger-specific and do not provide any basis for finding that the transaction would undermine competition in the backbone business. As we have explained, whether to engage in peering and/or transit relationships is dependent on a variety of economic and cost factors in addition to traffic ratios and that will remain the case following this transaction. *See, e.g., Reply at 75-81.* Indeed, as discussed below, MCI peers with at least one other Tier 1 network operator that exceeds the traffic ratio in MCI's published peering policy. We have further shown that, because the combined company will carry less than 10% of North American Internet traffic and will remain one of seven comparable or larger backbone operators, nothing about this transaction will give the combined company market power to engage in anticompetitive de-peering. *See id.* Rather, such decisions will be based on the same considerations of efficiency, cost, and other factors that apply today. Broadwing/SAVVIS do not refute this showing.

Instead, Broadwing/SAVVIS appear to suggest (at 9) that a decision to de-peer is inherently anticompetitive because the use of transit is “economically ruinous.” That is an ironic claim given that SAVVIS has de-peered or refused to peer with other network operators, including Verizon itself. Pilgrim Reply Decl. ¶ 6. In any case, as we have shown, transit pricing is competitive (and has come down rapidly in the past few years), and technological and commercial developments such as mirroring and secondary peering have also reduced transit costs. See Reply at 75-77; Kende Reply Decl. ¶¶ 16, 18-29. In view of these factors, a backbone operator can make an economically rational choice to forego building out a network to the point where others will peer with it and use transit instead. Alternatively, a provider could start with transit and then grow its network over time to a point where it makes economic sense for others to peer with it – a strategy that operators such as Level 3 have used with great success. Thus, the use of transit is not “economically ruinous.”

Broadwing/SAVVIS also suggest (at 9-10) that a network operator that relies on transit cannot keep traffic from multi-homed customers because of the “Border Gateway Protocol (BGP),” which they describe as generally routing traffic “based on the number of networks through which a message must travel to reach its destination.” Yet they significantly overstate and oversimplify the effect of this protocol. For example, contrary to their apparent assumption, one operator does not necessarily equal one “network” for purposes of this protocol. MCI’s networks in the U.S. and Europe are identified as two separate networks for purposes of the BGP (AS701 and AS702 respectively) and thus traffic that travels from a customer site in the U.S. to a customer site in Europe will traverse “two” networks even if MCI carries it end-to-end. Given these types of complications, Broadwing/SAVVIS’s assumption that the BGP automatically will prefer peering over transit is not true. Moreover, customers that are sophisticated enough to multi-home are also sophisticated enough to understand how the BGP works and do not just passively allow their traffic to be routed based solely on a generic protocol that is out of their control. Rather, they have a variety of mechanisms through which they can and do effectively “override” the BGP defaults so as to control how their traffic will be routed.

Finally, Broadwing/SAVVIS claim (at 10-11) that the ratio of outgoing to incoming traffic should not be a factor in peering decisions. This argument fails at several levels. First, it is not a merger-specific issue: traffic ratios are one of a number of factors used by network operators generally to determine whether to enter into peering relationships. Nothing about the transaction changes that or provides a basis for the Commission to now start regulating what factors should be considered in making these decisions. Second, according to their own Opposition in this proceeding, *Broadwing and SAVVIS themselves use traffic ratios as one of their own criteria for peering decisions.* Broadwing/SAVVIS Opp. at 41. Thus, their complaint here that there is no cost-based rationale for the use of such ratios borders on the hypocritical. Third, contrary to Broadwing/SAVVIS’s claim that such ratios are a “pretext” for “targeted de-peering,” as we have explained, that ratio is one of a variety of factors that enters into the peering decision. Reply at 76-77. Indeed, MCI currently peers with another Tier 1 operator – [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] – even though its outgoing to incoming traffic ratio is well above the ratio contained in MCI’s peering policy ([BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]).

Finally, as we have explained, the use of traffic ratios is cost-justified due to the convention of "hot potato routing," under which a backbone operator hands off traffic bound for a customer of another provider at the point of interconnection closest to the point of origin. As a result, a backbone provider that terminates substantially more traffic than it originates ends up bearing higher network costs. Reply at 79-80. Thus, the issue is not, as Broadwing/SAVVIS suggest (at 11 & Wilkie Decl. ¶ 8), whether the receiving party or sending party derive more "value" from the transmission, but which operator bears the transport costs. Although Wilkie suggests (at ¶ 10) that operators could switch to "cold potato" routing to alter who bears the costs, the appropriate routing convention for the Internet generally is not a merger-specific issue. Rather, the point is that under the routing conventions currently in place, the use of a traffic ratio is not some unjustified pretext (which presumably is why Broadwing/SAVVIS also continue to use it), and there is no basis for Broadwing/SAVVIS's suggestion that the Commission impose a condition that requires Verizon/MCI to disclaim the use of traffic ratios as one of the factors used in making peering decisions.

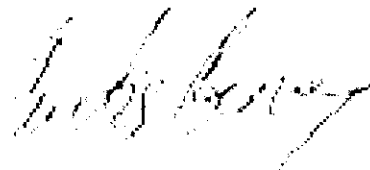
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In sum, Broadwing/SAVVIS still have not refuted Verizon/MCI's showing that this transaction will not have harmful effects on competition for Internet services, and they have provided no basis to reject the Application or to impose conditions on approval.

Sincerely,



Dec May
Verizon



Curtis Groves
MCI

cc: Julie Veach
William Dever
Ian Dillner
Gail Cohen
Tom Navin
Don Stockdale